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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 808

JACOB REICHERT,

Petitioner,

vs.

THE FEDERAL LAND BANK OF ST. PAUL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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REPLY BRIEF OF PETITIONER TO RESPONDENT'S BRIEF.

This reply brief will follow the order of the Respondent's brief using the paging of that brief as headings.

All emphasis in this brief is supplied.

Respondent's Reply Brief, Pages 2 and 3.

Section 3, starting at foot of page 2.

The respondent's statement of facts is erroneous at the top of page 2 to the effect that the rental order (R. 3):

> "required among other items the payment of the proceeds of a fixed share of the crops grown on the land in the year 1941, as rental."

The rental order does not so read. On the contrary it reads:

> "as rental **for the year 1941:**" * * * One-fourth of all the grain raised and harvested, including forage crops."

That is, for the **whole year** one-fourth of the crops was the rent. Redemption was exercised at the expiration of but one-fifth of the year. Rent is due only when it is earned. It is obvious that the rental order did not require the whole year's crop share for one-fifth of the year. Nor did it purport to require rent for any portion of the crop year preceding the entry of the order.

Respondent's Brief, Page 4.

Second Paragraph.

The petitioner does not question the validity of the rental order.

The farmer-debtor wholly complied with every phase of the rental order. That order (R. 3) required for the **entire year.**

1. One-fourth of the crops and forage.
2. One-fourth of all AAA payments made to the farmer-debtor.
3. $200 for use of buildings and pastures.

The farmer-debtor paid one-fourth of the crop proceeds of the **entire year 1940** prior to November 8, 1941. R. 5, fol. 5. At that time no AAA payment had been made to him for 1941 and none was due as rental; the $200 for the use for the **entire year** of the buildings and pastures was not then earned, as but one-fifth of the year had expired. The $1456.27, having been the one-fourth share for the entire

preceding crop year was more than was due for occupancy during one-fifth of the first year of the rental order, that is between April 28, 1941 (entry of the rental order R. 3) and November 8, 1941 (first mention that the right of redemption had been exercised. R. 5, fol. 5.)

Respondent's Brief, Page 4.

Third Paragraph.

The record conclusively shows, and the appellate court expressly found, that the estate is insolvent.

1. The appraisal states that the appraisers were

> "appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned to us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:"

Then follows the appraisal of the real estate, no personalty being included. The report specifically says it was made at the farm. R. 3, fol. 3.

No rental is fixed for chattels although Section 75(s)(2) requires it if chattels are part of the estate.

> "The debtor shall be permitted to retain possession of all or any part of his property * * * provided he pays a reasonable rent * * * for that part of the property of which he retains possession."

Clearly there was no chattel property in the estate.

2. The appellate court said

> "The appellee's claim allowed on its first mortgages amounted to $14,707.12. The value of the land fixed by the court was only $10,400." R. 37 top of page.

This is a finding that the estate is insolvent.

Respondent's Brief, Page 6.

Section Numbered 1.

Respondent's statement that the appellate court's decision in this case is not conflicting attempts to narrow the issue on this point to farmer-debtor cases. As shown in the petitioner's brief at pages 24 to 26 the appellate court's decision conflicts not only with its own previous decisions but with a decision of this Court. Not only so, but it also conflicts with the farmer-debtor statute, Section 75(k) (n) and (s) (2) and (3), as shown in petitioner's brief at pages 18 to 24.

As to the district court decisions in the Eighth Circuit which are discussed in the petitioner's brief at pages 26 to 33, we think that they not only followed the Eighth Appellate's own previous holdings but were in accord with the farmer-debtor statute.

Respondent's Brief, Pages 7 to 10.

Section Numbered 2.

In this section of its brief the respondent departs from the statute and rests its case on what it would prefer the statute to contain.

It refers to the statute's words "such rental" in Section 75(s)(2) as if they referred to the $1456.27 paid into court. They refer to the amount and kind of reasonable rental in accordance with the usual customary rental of the community in the immediately preceding sentence of the same Section 75(s)(2). By nature and by custom rental for one-fifth of the year's occupancy cannot reasonably be a share of the whole year's crops.

In the second paragraph on page 8 the respondent rests its argument on the ground that under the guise of the authority to order additional payments to be made, over

and above rental, as provided in the last sentence of Section 75(s)(2), the court may take more than it can take under its rental order and present it to the respondent without applying it on the valuation, contrary to Section 75(s)(3).

Such wishful thinking must be based upon the specific order which was never sought nor entered in this case.

As to *Wilson* v. *Dewey*, 133 F. (2d) 962), it is sufficient to point out, as the appellate court itself did in the first full paragraph in the second column at page 964, that the $16,500 appraised value of that farm was "more than ample to pay in full principal and accrued interest" on the first mortgage. This is a fact which distinguishes *Wilson* v. *Dewey* from this *Reichert* case in which, as has been shown, the same appellate court showed that respondent's first mortgages were $14,707 on land worth only $10,400.

In passing, it may be noted, that the respondent would have the farmer-debtor not only to lose the value of the use of his money laying idly in court *while the respondent contested* the valuation, and at the *same time pay rent* for the land he was redeeming.

This court has never held, and the *statute nowhere* provides, that rental may be charged either *before* the rental order is entered or *after* the right of redemption is exercised.

Respondent's Brief, Page 10.

Section Numbered 3.

That the farmer-debtor's estates is insolvent is shown not only by the record but was so found by the appellate court. It is so badly insolvent that the first mortgages alone are over $4,000 more than the value of the land. See petitioner's brief at page 34 and the opinion of the appellate court at R. 37.

Respondent's Brief, Page 11.

Section Numbered 4.

Again the petitioner makes it clear that he does not "Object to the stay and rental order." He more than complied with that order when he paid the crop share for the whole year whereas he occupied the farm but one-fifth of the year beginning with the entry of the rental order. R. 3, fol. 4. R. 3, fol. 3, first paragraph.

It is the application of the rental and of the statute that is questioned. The statute does not countenance charging a whole year of crop rental on crops produced by a whole year of farm operations, four-fifths of which preceded the entry of the rental order. Nor does *Wright* v. *Vinton*, 300 U. S. 440 support such a claim. The time when a rent payment is ordered to be made, whether within, or at the end of the first year, is not in issue.

April 18, 1944.

Respectfully submitted,

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